

The Honorable Robert S. Lasnik

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JASON MOOMJY, Individually and On Behalf
of All Others Similarly Situated,

Case No. 2:11-cv-00726-RSL

CLASS ACTION

[REVISED PROPOSED] ORDER FOR NOTICE AND HEARING

HQ SUSTAINABLE MARITIME INDUSTRIES, INC., NORBERT SPORNS and JEAN-PIERRE DALLAIRE, *et al.*

Defendants.

WHEREAS, a consolidated class action is pending before this Court entitled *Moomjy v. HQ Sustainable Maritime Industries, Inc., et al.*, Civil Action No. 2:11-cv-00726-RSL (the “Action”); and

WHEREAS, the Court has received the Stipulation of Settlement dated September 28, 2012, as amended by the Amendment to Stipulation of Settlement dated October 30, 2012 (the “Stipulation”), that has been entered into by Lead Plaintiff Trigon Emerging Agri-Sector Fund (“Lead Plaintiff”), and defendants HQ Sustainable Maritime Industries, Inc. (“HQSM”), Norbert Sporns, Jean-Pierre Dallaire, Lillian Wang Li, Ladenburg Thalmann & Co., Inc. and Roth Capital Partners, LLC (together, the “Defendants”) (Defendants and Lead Plaintiff are the “Parties”); and

WHEREAS, the Parties to the Action, having applied for an order determining certain matters in connection with the proposed settlement of the Action (the "Settlement"), in

1 accordance with the Stipulation entered into by the Parties, and for the ultimate final approval of
 2 the Settlement and dismissal of the Action as against the Defendants upon the terms and
 3 conditions set forth in the Stipulation;

4 NOW, upon consent of the Parties, after review and consideration of the Stipulation filed
 5 with the Court and the exhibits annexed thereto, and after due deliberation, IT IS HEREBY
 6 ORDERED that:

7 1. The Court, for purposes of this Order for Notice and Hearing, adopts all defined
 8 terms as set forth in the Stipulation.

9 2. Lead Counsel is authorized to act on behalf of the Class with respect to all acts
 10 required by, or which may be given pursuant to, the Stipulation or such other acts that are
 11 reasonably necessary to consummate the proposed Settlement set forth in the Stipulation.

12 3. Lead Counsel is hereby authorized to retain the firm Strategic Claims Services as
 13 Claims Administrator to supervise and administer the notice and claims procedures.

14 4. The Court preliminarily certifies the Class as defined in the Stipulation of
 15 Settlement and otherwise approves the Settlement of the Action as set forth in the Stipulation and
 16 the proposed Plan of Allocation described in the Notice, subject to the right of any Class Member
 17 to challenge the fairness, reasonableness, and adequacy of the Settlement, the proposed Plan of
 18 Allocation, or the fairness and adequacy of their representation by Lead Counsel, and to show
 19 cause, if any exists, why a final judgment dismissing the Action based on the Stipulation should
 20 not be ordered herein after due and adequate notice to the Class has been given in conformity
 21 with this Order.

22 5. A hearing (the "Settlement Fairness Hearing") shall be held on January 31, 2013 at
 23 9:00 a.m., in the United States District Court for the Western District of Washington in
 24 Courtroom 15106, 700 Stewart Street, Seattle, Washington, 98101, the Honorable Robert S.
 25 Lasnik presiding, to:

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1 a. determine whether the Settlement should be approved by the Court as fair,
 2 reasonable, and adequate;

3 b. determine whether judgment should be entered pursuant to the Stipulation,
 4 *inter alia*, dismissing the Action with prejudice and extinguishing and
 5 releasing all Released Claims and Settled Defendants' Claims (as defined
 6 therein);

7 c. determine whether the Plan of Allocation should be approved;

8 d. rule on Lead Counsel's application for an award of attorneys' fees and the
 9 reimbursement of expenses; and

10 e. rule on such other matters as the Court may deem appropriate.

11 6. The Court reserves the right to adjourn the Settlement Fairness Hearing, including
 12 the consideration of the application for attorneys' fees and reimbursement of expenses, without
 13 further notice to Class Members. The Court may, for good cause, extend any of the deadlines set
 14 forth in this Order without further notice to Class Members.

15 7. The Court reserves the right to approve the Settlement at or after the Settlement
 16 Fairness Hearing with such modification as may be consented to by the Parties to the Stipulation
 17 and without further notice to the Class.

18 8. The Claims Administrator shall make reasonable efforts to identify all persons and
 19 entities who are members of the Class, including beneficial owners whose shares of HQSM
 20 common stock are held by banks, brokerage firms, or other nominees. To the extent not already
 21 provided, HQSM shall provide to Lead Plaintiff within five (5) business days of the entry of this
 22 Order the information from HQSM's transfer records required by the Claims Administrator to
 23 send copies of the Notice to the persons and entities who can be identified through reasonable
 24 efforts from the stock transfer records of HQSM.

25 9. Within thirty (30) calendar days after the entry of this Order, the Claims
 26 Administrator shall cause a copy of the Notice (substantially in the form of Exhibit A-1 annexed

1 hereto) and Proof of Claim (substantially in the form of Exhibit A-2 annexed hereto) to be mailed
 2 by United States mail, postage prepaid, to all members of the Class, at their last known address
 3 appearing in the stock transfer records maintained by or on behalf of HQSM, and to identifiable
 4 nominees for Class Members. The thirtieth (30th) day after the entry of this Order shall be
 5 termed the "Notice Date."

6 10. Pursuant to the Notice, each nominee shall either: send the Notice and Proof of
 7 Claim to Class Members for which they act as nominee by first class mail within ten (10)
 8 calendar days after the nominee receives the Notice; or send a list of the names and addresses of
 9 such beneficial owners to the Claims Administrator within ten (10) calendar days after the
 10 nominee receives the Notice and, in the event of the latter, the Claims Administrator shall send by
 11 first class mail the Notice and Proof of Claim to all Class Members named on the list received
 12 from the nominee within ten (10) calendar days of the receipt of such information. The Claims
 13 Administrator shall, if requested, reimburse banks, brokerage houses, or other nominees for their
 14 reasonable out-of-pocket expenses incurred in providing notice to beneficial owners who are
 15 Class Members, which expenses would not have been incurred except for the sending of such
 16 notice, subject to further order of this Court with respect to any dispute concerning such
 17 compensation. Lead Counsel shall file with the Court and serve upon Defendants' Counsel no
 18 later than twenty-one (21) calendar days prior to the Settlement Fairness Hearing an affidavit or
 19 declaration describing the efforts taken to comply with this Order and stating that the mailings
 20 have been completed in accordance with the terms of this Order.

21 11. Within ten (10) calendar days of the Notice Date, Lead Counsel shall publish a
 22 Summary Notice, substantially in the form of Exhibit A-3 annexed hereto, once in the *Investor's*
 23 *Business Daily*, and shall post the full Notice and any other appropriate documents on a website
 24 concerning the Settlement. Lead Counsel shall file with the Court and serve upon Defendants'
 25 Counsel no later than twenty-one (21) calendar days prior to the Settlement Fairness Hearing an
 26 affidavit or declaration stating that the Summary Notice has been published in accordance with

1 the terms of this Order.

2 12. The form and method of notice specified herein is the best notice practicable and
 3 shall constitute due and sufficient notice to all persons and entities entitled to receive such notice
 4 and fully satisfies the requirements of due process and Fed. R. Civ. P. 23.

5 13. Any member of the Class who objects to the Settlement, the representation of the
 6 Class by Lead Counsel, and/or the application for attorney's fees and reimbursement of expenses,
 7 or who otherwise wishes to be heard, may appear in person or by his, her, or its attorney at the
 8 Settlement Fairness Hearing and present evidence or argument that may be proper or relevant;
 9 provided, however, that no person other than the Parties and their counsel shall be heard, and no
 10 papers, briefs, pleadings, or other documents submitted by any person or entity shall be
 11 considered by the Court unless at least fourteen (14) calendar days before the Settlement Fairness
 12 Hearing such person or entity files with the Court and delivers to counsel listed below: (a) a
 13 written notice of intention to appear; (b) a statement of such person's or entity's objection(s) to
 14 any matters before the Court; (c) the grounds therefor or the reasons that such person or entity
 15 desires to appear and be heard, as well as all documents or writings such person or entity desires
 16 the Court to consider; and (d) documents evidencing that such person is a Class Member. Such
 17 filings shall be served upon the Court and the following counsel so that they are received at least
 18 14 calendar days before the Settlement Fairness Hearing:

19 **Lead Counsel for Lead Plaintiff and the Class:**

20 Steven J. Toll, Esq.
 21 Julie G. Reiser, Esq.
 22 S. Douglas Bunch, Esq.
 23 COHEN MILSTEIN SELLERS & TOLL PLLC
 24 1100 New York Avenue, N.W.
 25 West Tower, Suite 500
 26 Washington, D.C. 20005

27 **One of Counsel for Defendant HQSM:**

28 Michael D. Handler, Esq.
 29 COZEN O'CONNOR
 30 1201 Third Avenue, Suite 5200
 31 Seattle, WA 98101-7237

1 **One of Counsel for Defendants Norbert Sporns, Jean-Pierre Dallaire, and Lillian Wang Li:**
2 Marc D. Ashley
2 CHADBOURNE & PARKE LLP
3 30 Rockefeller Plaza
3 New York, NY 10112

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5 **Counsel for Defendants Ladenburg Thalmann & Co. and
6 Roth Capital Partners, LLC:**

7 Miles A. Yanick
6 SAVITT BRUCE & WILLEY LLP
7 1425 Fourth Avenue, Suite 800
7 Seattle, WA 98101-2272

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9 14. Any Class Member who does not object to the Settlement and/or the Plan of
10 Allocation and/or Lead Counsel's application for an award of attorneys' fees and reimbursement
11 of expenses in the manner prescribed in the Notice shall be deemed to have waived such
12 objection and shall forever be foreclosed from making any objection to the fairness, adequacy, or
13 reasonableness of the proposed Settlement, the judgment(s)/order(s) to be entered approving the
14 Settlement, the Plan of Allocation or Lead Counsel's application for an award of attorneys' fees
15 and reimbursement of expenses.

16 15. Any person or entity falling within the definition of the Class may, upon request,
17 be excluded from the Settlement. Any such person or entity must submit to the Claims
18 Administrator a request for exclusion ("Request for Exclusion"). A Request for Exclusion must
19 be received by the Claims Administrator at least fourteen (14) calendar days before the
20 Settlement Fairness Hearing and state: (i) the name, address, and telephone number of the person
21 or entity requesting exclusion; (ii) the person's or entity's purchases, acquisitions and sales of
22 HQSM common stock made during the Class Period, including the dates, the number of shares of
23 common stock, and price paid or received per share for each such purchase, acquisition, or sale;
24 and (iii) that the person or entity wishes to be excluded from the Class. All persons and entities
25 who submit valid and timely Requests for Exclusion in the manner set forth in this paragraph
26 shall have no rights under the Stipulation and shall not share in the distribution of the Settlement.

1 16. Any Class Member who wishes to participate in the Settlement Fund must submit
 2 a valid Proof of Claim to the Claims Administrator, at the Post Office Box indicated in the
 3 Notice, postmarked not later than one hundred and fifty (150) calendar days following the Notice
 4 Date. Such deadline may be further extended by Court order. Proofs of Claim shall be deemed to
 5 have been submitted when postmarked, if mailed by first class, or registered or certified mail,
 6 postage prepaid, addressed in accordance with the instructions given in the Proof of Claim. All
 7 other Proofs of Claim shall be deemed to have been submitted at the time they are actually
 8 received by the Claims Administrator. To be valid, a Proof of Claim must: (i) be completed in a
 9 manner that permits the Claims Administrator to determine the eligibility of the claim as set forth
 10 in the Proof of Claim; (ii) include the release by the claimant of all Released Parties as set forth in
 11 the Stipulation; and (iii) be signed with an affirmation (notarization not required) that the
 12 information is true and correct. All Class Members who do not submit valid and timely Proofs of
 13 Claim shall be forever barred from receiving any payments from the Settlement Fund, but will in
 14 all other respects be subject to and bound by the provisions of the Stipulation and the Order and
 15 Final Judgment, if entered.

16 17. If this Settlement is not approved by the Court or does not become effective for
 17 any reason whatsoever, the Settlement (including any modification thereof) made with the
 18 consent of the Parties as provided for in the Stipulation and any actions taken or to be taken in
 19 connection therewith (including this Order and any judgment entered herein), shall be terminated
 20 and shall become void and of no further force and effect except for the Lead Plaintiff's
 21 obligations to pay for any expense incurred in connection with the notice and administration
 22 provided for by this Order.

23 18. All proceedings in the Action, other than such proceedings as may be necessary to
 24 carry out the terms and conditions of the Settlement, are hereby stayed and suspended until
 25 further order of this Court. Pending final determination whether the Settlement should be
 26 approved, Plaintiffs and all members of the Class are barred and enjoined from commencing or

1 prosecuting any action asserting any claims that are or relate in any way to the Released Claims
 2 as defined in the Stipulation. This Court's stay of the Federal Derivative Action, *In Re HQ*
 3 *Sustainable Maritime Industries, Inc. Derivative Litigation*, No. 2:11-cv-00910-RSL, and stay of
 4 discovery in the State Derivative Action, *In Re HQ Sustainable Maritime Industries Derivative*
 5 *Litigation*, No. 11-2-16742-9 SEA (King County Superior Court), shall remain in effect pending
 6 further order of the Court.

7 19. Neither the Stipulation nor any provisions contained in the Stipulation, nor any
 8 negotiations, statements, or proceedings in connection therewith, nor any action undertaken
 9 pursuant thereto shall be construed as, or deemed to be evidence of, an admission or concession
 10 on the part of the Plaintiffs, the Defendants, any member of the Class, or any other person or
 11 entity, of any liability or wrongdoing by them, or any of them, or as to the strength or weakness
 12 of any claim or defense, and shall not be offered or received in evidence of any action or
 13 proceeding (except an action to enforce the Stipulation and Settlement contemplated hereby), or
 14 be used in any way as an admission, concession, or evidence of any liability or wrongdoing of
 15 any nature, and shall not be construed as, or deemed to be evidence of, an admission or
 16 concession that Plaintiffs, any member of the Class, any present or former stockholder of HQSM,
 17 or any other person or entity, has or has not suffered any damage.

18 20. Any submission to the Court in support of approval of the Settlement or the Plan
 19 of Allocation, or in support of Lead Counsel's application for an award of attorney's fees and
 20 reimbursement of expenses, shall be filed no later than twenty-one (21) calendar days before the
 21 date scheduled for the Settlement Fairness Hearing.

22 21. Any response to any timely-filed objection to the Settlement, Plan of Allocation or
 23 application for an award of attorneys' fees and reimbursement of expenses shall be filed no later
 24 than seven (7) calendar days before the date scheduled for the Settlement Fairness Hearing.

25 22. The Court authorizes payment out of the Settlement Fund of the expenses
 26 described in paragraph 9 of the Stipulation.

1 23. The passage of title and ownership of the Settlement Fund to the Escrow Agent in
2 accordance with the terms of the Stipulation is approved. No person or entity that is not a Class
3 Member or counsel for the Lead Plaintiff shall have any right to any portion of, or interest in the
4 distribution of, the Settlement Fund unless otherwise ordered by the Court or otherwise provided
5 in the Stipulation.

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8 SIGNED this ____ day of _____, 2012.

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Honorable Robert S. Lasnik
United States District Judge

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CERTIFICATE OF SERVICE

I hereby certify that on October 30, 2012, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such filing to the following ECF participants:

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5 /s/ Elizabeth A. Leland
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